

Original
copy
M/049/021**SIDNEY BALTHASAR UNRAU, ESQ.**

Mediator, Attorney & Counselor at Law

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Fax ★ Facsimile ★ Fax

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Attn: Mary Ann Wright FAX NO: (801) 359-3940 RE: Dan Powell Agreement
 FROM: Sid Unrau, Esq. DATE: 22nd January 2004 PAGES (including this one): 007

NOTE

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The Material Faxed Herewith Is:

- ☐ For your information
☐ For your review
☒ As you requested

After Receiving This Fax:

- ☒ Please review it thoroughly.
☐ Please sign the "Approved as to Form" line and fax it back and send back your original signature.
☐ Please call our office immediately.
☒ Please mark any changes, comments or questions and fax (or send or bring) it back.
☒ Please call if you have any corrections, conflicts, exclamations, observations or any other concern.
☐ Please read and destroy.
☐ Please have it delivered to whomever needs it.
☐ Please don't bother us about it ever again.

NOTE

Please review the Agreement and set up an appointment to finalize with Dan Powell. Please call me with any changes or corrections.

- Sid Unrau

P.S. I did not attach a copy of the Division's Order (case No.

M/049/021)

RECEIVED

JAN 22 2004

DIV. OF OIL, GAS & MINING

BOND & RECLAMATION AGREEMENT

Preamble

WHEREAS Emery Industrial Resources, Inc. (hereafter "Emery"), by Dan Powell, is the leaseholder of interest to the Cherry Hill park Limestone Quarry located near Beaver Creek in Utah County, Utah, specifically in the NW 1/4 Section 36, Township 11 South Range 8 East, Salt Lake Base and Meridian (hereafter "the premises");

WHEREAS Emery therefore is in control of valuable resources to sell and to have mined/excavated and be sold;

WHEREAS the State of Utah, by The Division of Oil, Gas and Mining (hereafter "the Division") has obtaining an Administrative Order requiring a surety in the amount of \$43,500 to be paid by Emery/Dan Powell prior to any further mining on the premises, which Order (titled "Findings of Fact, Conclusions of Law and Order, hereafter "Order") is attached hereto and incorporated by this reference;

WHEREAS Emery has entered a Business and Sales Contract (hereafter "Contract") with Nielson Construction (hereafter "Nielson") and Stephen Powell to produce rock product, "producing" being defined as mining, crushing and screening rock, as necessary, a copy of which Contract is attached hereto and incorporated by this reference; and

WHEREAS the State of Utah has offered to grant a temporary mining permit allowing Emery/Dan Powell to recommence mining on the premises under terms that guarantee that the surety will be considered priority and paid in full as soon as possible under the Contract,

NOW THEREFORE the Division and Dan Powell/Emery, undersigned, hereby agree to the following terms of this Bond & Reclamation Agreement (hereafter "Agreement") to enact their mutual desires.

Terms

1. Emery/Dan Powell agrees to pay a minimum of \$1.00 (one dollar) for each and every ton of rock and/or rock product for which he is paid under the terms of the Contract (as specified above) - or any other contract or agreement concerning the premises - to the Division until the surety is paid in full, and in no case later than 31 December 2005. These monies are to be held in escrow pending payment to any company who performs the reclamation work on the premises (see paragraph 4, below).
2. The Division, upon signing this Agreement, hereby agrees to immediately grant a

Temporary Mining Permit allowing Dan Powell/Emery to recommence mining operations until the surety is paid in full, at which time Dan Powell/Emery will be granted a Large Mining Permit pursuant to the Order (see paragraph C on page 7 of the Order).

3. The parties agree that an Amended Order can enter reflecting the terms of this Agreement.
4. It is the express intent of Emery/Dan Powell that Nielson will be granted the contract for the work of reclamation, subject to the approval of the Division. The Division, agrees to immediately pay whoever is granted the contract for the reclamation work, or portion thereof, completed, from the proceeds of the surety, billed by the company performing the reclamation work.

Execution of this Agreement

The parties, undersigned, agree to be bound by the terms of this agreement as of the latest date indicated below:

DATED ____/____/____

EMERY INDUSTRIAL RESOURCES, Inc.

By _____

Title _____

DATED ____/____/____

STATE OF UTAH
DIVISION OF OIL, GAS & MINING,

By _____

Title _____

COPY

BUSINESS & SALES CONTRACT

Preamble

WHEREAS Emery Industrial Resources, Inc. (hereafter "Emery") is the leaseholder of interest to the Cherry Hill park Limestone Quarry located near Beaver Creek in Utah County, Utah, specifically in the NW 1/4 Section 36, Township 11 South Range 8 East, Salt Lake Base and Meridian;

WHEREAS Emery therefore is in control of valuable resources to sell and to have mined/excavated and be sold;

WHEREAS Nielson Construction (hereafter "Nielson") does business producing rock product, "producing" being defined as mining, crushing and screening rock, as necessary;

WHEREAS Nielson desires to do business with and obtain, purchase and produce rock and related resources from Emery; and

WHEREAS Stephen Powell is associated with Nielson and is authorized to acquire sales and contracts concerning Emery's resources;

WHEREAS Emery & Nielson (hereafter collectively referred to as "the parties") desire to enter a business relationship whereby each party can attain its respective business desires;

NOW THEREFORE the parties, undersigned, hereby agree to the following terms of this Business and Sales Contract (hereafter "Contract") to define their business relationship.

Terms

1. Emery has the right to make sales contacts and sell rock products of any and all specifications and quantities and will report such transactions to Nielson, who will produce said rock to buyer's specifications in a prompt and timely manner as negotiated and agreed to between Emery and the purchaser(s), *however in the event that Nielson is not in a position to accept any of these contracts then at this time Emery shall have the right to allow this third party contractor to mine onto the premises and to mine, crush, screen and produce that amount needed to satisfy these sales contracts of Emery.*

2. Nielson will exclusively bear and hold Emery harmless from all costs of its production endeavors incident to this Contract, including the actual costs of production, employment associated with production (including any insurance, taxes and other costs associated with the regular course of its business).

3. All limestone purchases made by Nielson and/or Stephen Powell will be made by

and through Nielson and all invoices shall be made by Nielson for such sales.

4. Nielson agrees to purchase a minimum of forty thousand (40,000) tons of limestone rock (or related rock product) from Emery during the 2004 calendar year at a purchase price of \$1.25 per ton.
 - a. This price is firm only for the first 40,000 tons purchased and any limestone rock or related rock product, purchased after the initial 40,000 tons, will be sold to Nielson or Stephen Powell, at a price to be set by Emery at the time of sale, with said price to be based on a fair market price for the end product of said limestone and related products. However, in no case is the purchase price to be less than \$1.25 per ton.
5. Nielson will weigh all rock/rock product taken from Emery, regardless whether the rock is taken by Nielson or Stephen Powell, and shall furnish copies of all weight slips to Emery monthly by the first business day of the following month.
6. All payments due under this Contract shall be made to Emery (checks are to be made out to "Emery Industrial Resources, Inc.") and shall be paid by Nielson with in ~~45~~ days of receiving an invoice from Emery.
(30) thirty *A.I.P.*
7. Nielson and Stephen Powell hereby acknowledge that they are fully aware of the status of the Cherry Hill Park Quarry with the State of Utah Division of Oil, Gas & Mining and the bond which needs to be satisfied prior to obtaining any mining permit by Emery, and therefore all terms of this Contract are subject to appropriate approval by the State of Utah.
8. Emery is aware that Stephen Powell has an agreement with Nielson concerning sales of limestone and limestone products and all parties to this agreement acknowledge that all monies due Stephen Powell for his services shall be paid by Nielson and all sales of limestone/limestone products made by Stephen Powell shall be made through Nielson, and for purposes of this Contract Nielson and Stephen Powell shall be considered one and the same.
9. Both Nielson and Stephen Powell and their agents and employees shall hold Emery harmless against any and all claims for injury or death resulting from their operations on Emery's premises.
10. Either party may terminate this agreement upon giving at least 30 days written notice to the other party, but only after the initial 40,000 tons of rock, as set forth in paragraph 4(a), above, is purchased.
11. This agreement may be assigned by either party, with prior approval in writing from other party, but only after the initial 40,000 tons of rock, as set

forth in paragraph 4(a), above, is purchased.

12. In the event either party breaches the terms of this contract, the non-breaching party will notify the breaching party in writing and allow thirty (30) days to cure said breach. In the event the breach is satisfactorily cured, then there are no consequences. However, if the non-breaching party is not satisfied that the breach is cured, then this contract is considered terminated and all remaining monies or services due under the contract are immediately due to be paid or performed in full.
13. The parties agree that, in the event of any dispute arising between them concerning the terms of this contract, they will first attempt to mediate a resolution to their dispute prior to filing any court action.
14. All notices between the parties shall be sent to the following addresses:

Emery Industrial Resources, Inc.	Nielson Construction
Attention: Dan Powell	P.O. Box 620
148 S. 100 East	Huntington, Utah 84528
Spanish Fork, Utah 84660	
15. The parties agree that Utah will retain jurisdiction for enforcing the terms of this contract.
16. The parties agree that any terms of this contract deemed unenforceable, illegal or otherwise incompatible with the laws of the State of Utah will not effect the enforceability of any other term of this contract.
17. The parties agree that, in the event of any breach of this contract, the parties must first seek to cure the breach as set forth above in paragraphs 12 and 13, and thereafter the non-breaching party may proceed in accordance with the other terms of this contract setting forth provisions to remedy the harm done to the non-breaching party.
18. The parties agree that the non-prevailing party will bear all costs associated with pursuing remedies, whether or not this matter goes to court, including attorney's fees, court costs and other reasonable costs.

Execution of this Agreement

The parties, undersigned, agree to be bound by the terms of this agreement as of the latest date indicated below:

DATED 1 / 19 / 04

EMERY INDUSTRIAL RESOURCES, Inc.

" as

By *Scott L. Powell*

amended"

Title President

DATED 1 / 19 / 04

NIELSON CONSTRUCTION

" as

By *Wayne L. Nielson*

amended"

Title President

DATED 11 / 19 / 04

Stephen Powell
STEPHEN POWELL

" as

amended"